83-2116

in the

Supreme Court
of the
United States

OCTOBER TERM, 1984

No._____

MICHELE R. SCHRAM, as Personal Representative of the Estate of MICHAEL GAYDOS, deceased, and individually; MILLER ADAMS and MARY ADAMS, his wife; and NICK ADAMS and JOSIE ADAMS, his wife,

Petitioners,

vs.

DADE COUNTY, a political subdivision of the State of Florida.,

Respondent

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

---

PETITION FOR A WRIT OF CERTIORARI

SHERIDAN K. WEISSENBORN,
PAPY, POOLE, WEISSENBORN
& POOLE
201 Alhambra Circle
Coral Gables, Florida 33134

31pp

QUESTIONS INVOLVED

1. Whether there is substantial federal question involved.

2. Whether in a state (county) eminent domain case the rulings of the District Court of Appeal of Florida, Third District, limiting petitioners' damages to the value of the property taken violates their rights to just compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution.

3. Whether Section 73.071 (b), Florida Statutes is repugnant to the Just Compensation and Due Process provisions of the Fifth and Fourteenth Amendments and the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

No._____

MICHELE R. SCHRAM, as Personal Representative of the Estate of MICHAEL GAYDOS, deceased, and individually; MILLER ADAMS, and MARY ADAMS, his wife; and NICK ADAMS and JOSIE ADAMS, his wife,

Petitioners

vs.

DADE COUNTY, a political subdivision of the State of Florida,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

MICHELE R. SCHRAM, as personal representative of the Estate of MICHAEL GAYDOS, deceased, and individually; MILLER ADAMS and MARY ADAMS, his wife; and NICK ADAMS and JOSIE ADAMS, his wife, the petitioners herein, pray that a writ of certiorari issue to review the judgment of the District Court of Appeal of Florida, Third District, entered in the above entitled case on February 21, 1984 (Petitioners' Motion for Rehearing was denied by the said lower court on March 23, 1984).

(Note: Under *Dodi Pub. Co. v. Editorial America, S.A.*, 385 So. 2d 1369 [Fla. 1980], and *Robles Del Mar, Inc. v. Town of Indian River Shores*, 379 So. 2d 967 [Fla. App. 4th 1979] the District Court of Appeal of Florida, Third District, was the state court of highest resort).

OPINION BELOW

The opinion of District Court of Appeal of Florida, Third District, is reported at 445 So. 2d 1080 and is printed in Appendix A hereto, infra, page 12. The judgement of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County is printed in the Appendix hereto — as Exhibit A.

JURISDICTION

The jurisdiction of the Supreme Court is invoked under Title 28 § 1257, subsections (2) and (3), U.S. Code.

QUESTIONS INVOLVED

1. Whether there is substantial federal question involved.
2. Whether in a state (county) eminent domain case the rulings of the District Court of Appeal of Florida, Third District, limiting petitioners' damages to the value of the property taken violates their rights to just compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution.
3. Whether Section 73.071 (b), Florida Statutes is repugnant to the Just Compensation and Due Process provisions of the Fifth and Fourteenth Amendments and the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution.

STATUTE INVOLVED

Section 73.071 (b), Florida Statutes, reads as follows:
73.071. Jury trial; compensation severance damages

(b) Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking, including, when the action is by the Division of Road Operations of the Department of Transportation, county, municipality, board, district or other public body for the condemnation of a right-of-way, and the effect of the

taking of the property involved may damage or destroy an established business of more than 5 years' standing, owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party, the probable damages to such business which the denial of the use of the property so taken may reasonably cause; any person claiming the right to recover such special damages shall set forth in his written defenses the nature and extent of such damages; and

STATEMENT OF THE CASE

This cause in the trial court was initiated upon the respondent's Petition in County Eminent Domain Proceedings brought with respect to petitioner SCHRAM'S bar and package store business property and the petitioners Adams combined palmistry studio and residential property.

At the trial the petitioners sought at several times in hearings outside the presence of the jury to secure leave of court to present evidence to the jury to the effect that the measure of damages they would be allowed to claim would be that amount of money which would be necessary to enable them to purchase replacement properties upon which they could relocate, respectively, the bar and package store business and the combined palmistry studio and residence but the trial judge prohibited the presentation of such evidence to the jury and limited the petitioners to damages based upon the value of the properties taken.

In this regard, the petitioners, in addition to claiming State Constitutional right to full compensation for their losses invoked their right to Just Compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution. See Appendix, Exhibit C.

It was agreed to by and between the parties hereto in

the Appellate proceeding in the District Court of Appeal of Florida, Third District, in a Stipulated Statement of Parties to Appeal that had the petitioners been allowed to assert the measure of damages claimed by them, the verdicts (and thus the judgment setting the amounts of their damages) could have been but would not necessarily have been larger in amount than they actually were. The Stipulated Statement of Parties to Appeal is printed in Appendix G, pages 23, 24, & 25.

The petitioners also sought at the trial to have the judge declare the aforedescribed Section 73.071 (b), Florida Statutes, declared unconstitutional inter alia, as being repugnant to the Fifth and Fourteenth Amendments to the U.S. Constitution for the reason that such statute limited the awarding of business damages to condemnees suffering a partial taking of their business properties into which category the petitioners did not fit since the total taking of their properties was involved. The trial judge denied the petitioner's motions in this regard.

REASONS FOR GRANTING WRIT

This Court has jurisdiction to grant the requested Writ of Certiorari even though the District Court of Appeal of Florida, Third District, did not expressly pass upon the involved federal constitutional questions because the Just Compensation provision of the Fifth Amendment is applicable to state eminent domain proceedings through the Fourteenth Amendment: *Chicago, Burlington & Q.R. v. Chicago,* 166 U.S. 226, 17 S. Ct. 581, 41 L. ED. 979 (1897); *Smyth v. Ames,* 169 U.S 466, 18 S. Ct. 418, 42 L. Ed. 197, modified on other grounds 171 U.S. 361, 18 S. Ct. 888, 43 L. Ed. 197 (1898), and *Penn. Central Transp. Co. v. City of New York,* 438 U.S. 104, 98 S. Ct. 2426, 57 L. ED. 2d 631, reh. den. (U.S.) 99 S. Ct. 226, 58 L. ED. 2d 198 (1978).

Further, and arguing by analogy, the holding of a

state court of last resort that a state tax constitutes an excise tax under state law would be binding on this Court but such ruling is not determinative of the question of whether the tax deprives a taxpayer of a federal right. *Richfield Oil Corp. v. State Bd. of Equalization*, 329 U.S. 69, 67 S. Ct. 156, 91 L. Ed. 80 (1946).

There can be no question but that the involved federal constitutional questions were raised and preserved in both the trial court and in the appellate court below, the applicable parts of the record from the appellate court below being printed in the appendix, Exhibits C, D, E, F & G.

There is a substantial federal question involved because these petitioners have been denied the opportunity of claiming their full measure of damages in a state eminent domain proceeding afforded them under the Just Compensation provision of the Fifth Amendment through the Due Process clause of the Fourteenth Amendment.

Further, the question of what constitutes Just Compensation is obviously an important question of federal law and, candidly speaking, it is one that needs to be settled by this Court.

These petitioners contend that the Just Compensation provision is clean and unambiguous and that it should thus be enforced without interpretation; further, that enforcement means that whatever amount of money is necessary to make the condemnee as whole as possible is what the condemnee is entitled to receive and that anything less than this is something other than Just Compensation.

In this regard, these petitioners place their reliance in an old but hopefully still viable decision, *Ogden v.*

Saunders, 25 U.S. 213, 12 Wheat 213, 6 L. Ed. 606 (1827), in which this Court held that where a provision of the U.S. Constitution is not ambiguous and its meaning is entirely free from doubt, the intention of the framers cannot be inquired into and the court is bound to give the provision full operation, whatever be the views entertained of its expediency.

Some federal decisions in the eminent domain area follow the rule of Ogden, such as *Georgia Pacific Corp. v. United States,* 640 F. 2d 328 (U.S. Ct. Cl. 1980) and *United States v. 499.471 Acres of Land* 701 F. 2d 549 (5th CCA 1983) but in *United States v. 564.54 Acres of Land,* 441 U.S. 506, 99 S. Ct. 1854, 60 L. Ed. 2d 435 (1979) this Court made the following pronouncement, to wit:

> In giving content to the just compensation requirement of the Fifth Amendment, this Court sought to put the owner of condemned property "in as good a position pecuniarily as if his property had not been taken." *Olsen v. United States,* 292 US 246, 255. 78 D Ed. 1236, 54 S. Ct. 704 (1934). *However, this principle of indemnity has not been given its full and literal force.* Because of serious practical difficulties in assessing the worth an individual places on particular property at a given time, we have recognized the need for a relatively objective working rule.
>
> *(Emphasis supplied)*

The Court in the 565.54 Acres case went on to hold that the concept of fair market value was "a useful tool" in determining Just Compensation although it conceded "that such an award does not necessarily compensate for all values an owner may derive from his property" thereupon recognized a "special value of property to the owner" exception.

These petitioners respectifully urge upon this Court

that it is somewhat ironic that federal and state appellate courts have been so reluctant in the past to simply require full enforcement of the involved basic property right protection while they have galloped off like Don Quixote of old in reading into other constitutional provisions meanings that were never there.

It is time for this Court, the final arbiter in the American system, to end the confusion in this important area of federal constitutional law; to end the maze of rules, and exceptions to rules, and to declare forthrightly that there are indeed no inexorable rules for the determination of what constitutes Just Compensation, and that Just Compensation is to be arrived at by whatever means are necessary to make the condemnee as whole as possible from the loss he has suffered.

Finally, and with reference to Sect. 73.071 (b), Florida Statute, it should have been declared unconstitutional or violative of the U.S. Constitution for all the above-stated reasons and, further, because the distinction between condemnees who suffer only a partial taking of their property and condemnees who suffer the total taking of their property is arbitrary and without any rational basis and it makes no sense whatsoever (for the former to be entitled to "business damages" and for the latter to not be entitled to such damages).

These petitioners concede it to be the law that theirs is the burden of demonstrating arbitrariness, discrimination, lack of rationality, etc., but in this regard, they simply submit that in this instance it is plain on the face of the involved classification that it contains all of these negative qualities.

There simply is not conceivable rational basis for the distinction between the two involved classes and "rational basis" is the sine qua non in so far as con-

stitutionality in this area is concerned. *Burns v. Swenson,* 430 F. 2d 771, cert. den. 404 U.S. 1062, 92 S. Ct. 743, 30 L. Ed. 2d 751, reh. den. 405 U.S. 969, 92 S. Ct. 1178, 31 L. Ed. 2d 245 (8th CCA 1970).

CONCLUSION

Based upon the foregoing, these petitioners pray the Court to issue a Writ of Certiorari to the District Court of Appeal of Florida, Third District, and to review and reverse the involved ruling of that Court.

APPENDIX

EXHIBIT A .....The Judgment sought to be reviewed.

EXHIBIT B .....The Order Denying the petitioners' Motion for rehearing.

EXHIBIT C .....Excerpts from answer of Michael J. Gaydos appeal et al. in trial court.

EXHIBIT D .....Excerpts from motion for a new trail.

EXHIBIT E .....Excerpts from proceedings at trial.

EXHIBIT F .....Excerpts from Initial Brief in State Appellate Court.

EXHIBIT G .....Stipulated Statement of Parties to Appeal.

EXHIBIT A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1984
CASE NO. 83-1276

MICHELE R. SCHRAM, as Personal Representative of the Estate of MICHAEL GAYDOS, deceased, and individually; MILLER ADAMS and MARY ADAMS, his wife; and NICK ADAMS and JOSIE ADAMS, his wife,

Appellants,

vs.

DADE COUNTY, a political subdivision of the State of Florida,

Appellee.

Opinion filed February 21, 1984.

An Appeal from the Circuit Court for Dade County, Robert H. Newman, Judge.

Lee Weissenborn, for appellants.

Robert A. Ginsberg, County Attorney and Stephen J. Keating, Assistant County Attorney, for appellee.

Before SCHWARTZ, C.J. and BARKDULL and BASKIN, JJ.

PER CURIAM.

Affirmed. *State Road Department v. Bramlett*, 189 So. 2d 481 (Fla. 1966); Section 73.071(3) (b), Florida Statutes (1981).

EXHIBIT B

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D., 1984
FRIDAY, MARCH 23, 1984

CASE NO. 83-1276

MICHELE R. SCHRAM, etc., et al.,
Apellants,

vs.

DADE COUNTY, a political subdivision of the State of Florida,
Appellee.

Upon consideration, appellants' motion for rehearing is hereby denied.

A TRUE COPY

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of Appeal,
Third District

By _____
Deputy Clerk

cc: Lee Weissenborn
Stephen J. Keating

/b

EXHIBIT C

EXCERPTS FROM ANSWER OF MICHAEL J. GAYDOS INDIVIDUALLY, AND d/b/a WESTGATE BAR, MICHELE SCHRAM, INDIVIDUALLY, AND d/b/a WESTGATE BAR, IN CASE NO. 82-8734. CA 23 A COUNTY EMINENT DOMAIN PROCEEDING INITIATED BY DADE COUNTY.

DEFENDANTS MICHAEL J. GAYDOS, individually, and d/b/a WESTGATE BAR, MICHELLE SCHRAM, individually, and d/b/a WESTGATE BAR, by and through their undersigned counsel, herewith file this their Answer to the Petition in County Eminent Domain Proceedings and Declaration of Taking, and they allege as follows:

... Wherefore these defendants pray the Court as follows:

(1) That defendant Michael J. Gaydos be awarded an amount of money constituting full compensation for the involved premises to be calculated as of the date the petitioner acquired the first nearby or adjacent parcel property (to his property).

(2) The defendants be fully compensated for their loss of business profits and/or their loss of income; for necessary relocation costs, including but not limited to the cost of acquiring a new site upon which to operate their business; that they be awarded monies damages for various and sundry instances of the present property being damaged by the petitioner's agents; that they be awarded damages for all other claims to which they are entitled to assert under Federal or State law.

EXHIBIT D

EXCERPTS FROM MOTION FOR A NEW TRIAL FILED IN BEHALF OF MILLER ADAMS, ET AL, IN DADE COUNTY VS. MILLER ADAMS, ET AL., CASE NO. 82-8734 CA 23 CIRCUIT COURT OF THE 11th JUD. CIR. IN AND FOR DADE COUNTY, FLA.

(1) The Court erred in refusing to allow the defendants, by and through their counsel, witnesses, and their own proposed testimony to make a showing to the Jury as to the amount of money required with respect to each of the defendants to enable them to replace the properties taken by eminent domain with other properties upon which other properties they could relocate their respective businesses (and, in addition, defendants Adams could replace their residence) which replacement costs are the "just compensation" as required by the 5th and 14th Amendments to the U.S. Constitution and "full compensation" as required by Section 6, Article X (Declaration, of Rights of the Constitution of the State of Florida), rather than the so-called market value of the properties taken from the respective defendants, and that as a result thereof such federal and state constitutional rights were violated as were the defendants' federal and state constitutional due process and equal protection rights.

(2) That the court erred in refusing to allow the defendants to claim business loss and thereby violated the same federal and state constitutional rights enumerated in the above paragraph of this pleading.

(3) That the Court further erred in failing to declare unconstitutional (as to both the aforedescribed federal and state constitutional provisions) those provisions of Chapters 73 and 74, Florida Statutes, particularly including Section 73.071, which statutory provisions purport to diminish and dilute the clear constitutional standards, respectively, of "just compensation" and "full compensation".

EXHIBIT E

EXCERPTS FROM PROCEEDINGS, TAKEN CASTILLO & CASTILLO, OFFICIAL COURT REPORTERS, BEFORE THE HONORABLE ROBERT NEWMAN, CIRCUIT COURT JUDGE, DADE COUNTY COURTHOUSE, 73 WEST FLAGLER STREET, MIAMI, FLORIDA, ON THE 10TH DAY OF FEBRUARY, 1983 AT 10:00 A.M. IN *DADE COUNTY VS. MICHELE SCHRAM, ETC., MILLER ADAMS, ET. AL.* CASE NO. 82-8734 CA 23, CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

(Thereupon, the following proceedings were commenced in Chambers out of the presence of the Jury:)

THE COURT: I think we are here on a question in law as to damages, that is, what the Defendants are entitled to in this taking.

Let me see if I can understand the position of both sides.

The Plantiff indicates that the only compensation is full and complete compensation for the property and contents at the time of the taking?

MR. KEATING: Yes, sir; the real property and no business damages.

THE COURT: Right.

And I think the Defendants' position is, they're entitled to loss of business and/or loss of replacement of property and the building.

Is that so or am I mistaken?

MR. WEISSENBORN: Yes, sir.

THE COURT: At least we know where we are.

That is the point we are here on.

THE COURT: I don't disagree with anything you're saying about full compensation. I accept that — whether Mr. Keating agrees or disagrees, I accept that.

That's what we're here for, to decide full compensation. I don't think, at this point, full compensation includes additional funds your client would have to pay to relocate their business on another place of property, which is, what you are asking for.

MR. WEISSENBORN: Yes, sir.

THE COURT: I understand the point as you have now — there is nothing to convince me, according to the Statute and according to the cases you have cited that you're entitled.

That's where I'm coming from.

(By Mr. Weissenborn in behalf of the condemnees):

Plain logic has to tell you that if the Government comes in, and I own this table, and they take this table away from me, and I need this table — I need a table — and if they come in here and take this table away from me, I ought to be compensated, whatever it is going to cost me to replace my table; otherwise . . .

I am seeking here to invoke that. I am seeking here to ask Your Honor to also, if it is necessary for this Constitutional — for us, my client, to have the advantage of the circumscription — hope that's a good word — of the full compensation, protection.

If it is necessary for Your Honor to declare Section 73 B as unconstitutional or violative of full compensation section of the Constitution, then, I'm asking Your Honor

to do that.

And these cases do deal with this Constitutionality, when it has to face up and square to the Florida constitution full compensation provision in this regard — reading from the Florida Jurisprudence, Second Volume: Deny, under Constitutional law, it is the duty of the Court to strike down a statute or ordinance, which is found to be in positive conflict with some provisions of organic law, irrespective of wisdom of such legislation and consequences of the determination.

Thus, rests upon the Court the affirmative duty of resisting to sustain that by which the Constitution has been declared repugnant to public policy, that of supporting, protecting, defending the Constitution by striking the Statute.

In not doing so, the Constitution is held to be inoperative.

That is an outrageous Statute. It violates my client's due process rights under the Constitution.

And I invoke the Fifth Amendment and invoke the Fourteenth Amendment, the Federal Constitution on behalf of my client.

Obviously, it is just logical, if I own a piece of property and the County takes it in eminent domain as the case here, a bar property, with all.

It violates my client's equal protection rights, be it the Federal Constitution, because the Statute sets up an unreasonable classification of those who have a partial taking can get business damages and those who have a whole taking cannot.

It is without logic or reason. And it flies in the face of common sense. And it ought to be stricken down, more importantly. . . . .

Obviously, it is just logical, if I own a piece of property and the County takes it in eminent domain as the case here, a bar property, with all been left alone.

And I have two clients, Your Honor, who are out of business: One, not only out of the business; out of his residence.

I am prepared to show they have tried to replace their property and it's going to take two or three times the money that the County wants to pay.

I don't see how that squares with all the Constitutional guarantees. . . . .

And the full damages in this case are, we have two people who are out of business, one of them is out of a residence.

And they can't take the money the County wants to give or, respectively, that Your Honor did at the taking — they can't take that money and go out and replace that property.

They are just outsville.

I don't think that can be righted. I don't think it can be Constitutional.

I know it is difficult for you, perhaps, to consider striking a statutory provision, but I think it is your duty to strike it. I think that whole statute does not reach, to me, full compensation — it is just no question what it has got to be — land-owner has got to be compensated for its losses and on attorney's fees, expert witness fees.

Case by case and cost — what I am saying is much more funds —

THE COURT: The Court fully understands what you are saying, but is not convinced, at this point, that full compensation means additional compensation for what the owner of the property would have to pay for another piece of property or to re-establish his or her business.

THE COURT: That's where you and the Court differ. And I am going to stay with the ruling I made ealier in reference to this . . .

THE COURT: Only thing they can testify, what they feel the value of their property, not what the feel it would cost to go elsewhere.

EXHIBIT F

EXCERPTS FROM INITIAL BRIEF OF APPELLANTS MICHELE SCHRAM, ET AL. IN THEIR APPEAL TO DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, IN WHICH DADE COUNTY WAS THE RESPONDENT.

POINT ON APPEAL

WHETHER THE TRIAL COURT ERRED IN ITS RULING THAT UNDER "FULL COMPENSATION" PROVISION OF STATE CONSTITUTION, MEASURE OF DAMAGES IN EMINENT DOMAIN CASES WAS LIMITED TO VALUE OF PROPERTY TAKEN AND DOES NOT EXTEND TO COST OF REPLACING PROPERTY TAKEN, AND IN MAKING CONCOMITANT RULING UPHOLDING CONSTITUTIONALITY OF SECT. 73.071 (b) FLORIDA STATUTES, INSOFAR AS SUCH PROVISION GRANTS BUSINESS DAMAGES TO CONDEMNEE WHERE PARTIAL TAKING OF PROPERTY INVOLVED BUT DENIES BUSINESS DAMAGES TO CONDEMNEE WHERE TOTAL TAKING OF PROPERTY INVOLVED?

The rulings by the trial court that these property owners could not claim as a part of their measure of damages those amounts of money which would be required to purchase replacement properties for their respective business, (and in the case of the Adams, a business and home combined), but that rather their respective measure of damages would be limited to the value of the properties taken, really embrace the second challenged ruling, which is the alleged constitutionality of Section 73.071 (b), Florida Statutes, insofar as such statutory provision purports to limit the awarding of business damages to condemnees who suffer only a partial taking of their property.

It is the contention of these property owners that the aforedescribed rulings relative to the measure of damages, and the ruling upholding the said Section 73.071 (b) against the constitutional attack above-described, are violative of the plain provisions of Article 10, Sect. 6, Constitution of the State of Florida, and of the Eminent Domain clause of the Fifth Amendment to the U.S. Constitution.

EXHIBIT G

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

CASE NO. 83-1276

STIPULATED STATEMENT OF
PARTIES TO APPEAL

MICHELE R. SCHRAM, as Personal Representative of the Estate of Michael Gaydos, deceased, and individually, MILLER ADAMS and MARY ADAMS, his wife, and NICK ADAMS and JOSIE ADAMS, his wife,

Appellants,

vs.

DADE COUNTY, a political subdivision of the State of Florida,

Appellee.

The parties to this Appeal, MICHELE R. SCHRAM, as Personal Representative of the Estate of Michael Gaydos, deceased, and individually, MILLER ADAMS and MARY ADAMS, his wife, and NICK ADAMS and JOSIE ADAMS, his wife, and DADE COUNTY, a political subdivision of the State of Florida, by and through their undersigned counsel, pursuant to the provisions of Rule 9.200(a), Florida Appellate Rules, herewith stipulate to the following statements of facts and law to events that occurred in the lower court, to-wit:

This case came for trail before the lower court upon the Petition in County Eminent Domain Proceedings of the Appellee, Dade County, brought with respect to properties owned by the respective above-named property

owners, who are the Appellants herein. The right of Dade County to take the property and the public purpose therefor were not contested and thus were not an issue in the lower court, and an order of taking was entered by the lower court on a date prior to the trial. The defendants' properties were, respectively, a bar and package store business in existence for more than five year and a palmistry studio in existence for more than five years. The taking was of the entirety of both properties.

The parties concur that if the defendants had been allowed to assert the measure of damages contended for by them, the verdicts could have been but would not necessarily have been larger in amount than they actually were.

The Jury heard a prima facie case from the Petitioner as to what the fair market value of the properties were, which case was supported by competent expert testimony.

The defendants sought at several points during the trial in hearings in chambers to secure leave of court to present evidence to the Jury to the effect that the measure of damages they should be allowed to claim would be that amount of money which would enable the defendants to relocate, respectively, their bar and package store business and their palmistry studio (which was operated in their home) rather than be limited to a measure of damages based upon the value of the property taken. The trial court refused to allow the defendants to claim as the measure of damages anything but the value of the properties taken and the trial court denied the defendants' Motion for a New Trial raising this ground.

The defendants also sought at the trial to have Florida Statute 73.071(b) as it relates to business damages declared unconstitutional under the 5th and 14th Amend-

ments to the U.S. Constitution and under Section 6, Article X of the Constitution of the State of Florida, for the reason that under the said statute business damages were limited to condemnees who suffer a partial taking of their business property. The trial court denied this motion of the defendants and upheld the constitutionality of Florida Statute 73.071(b). There was a total taking of each of the two properties which was the basis of the ruling that business could not be claimed.

Dated this 27th day of July, 1983.

/S/ LEE WEISSENBORN

/S/ STEPHEN J. KEATING
Assistant County Attorney

CERTIFICATE OF SERVICE

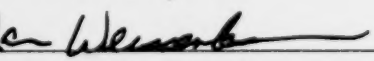
I, SHERIDAN K. WEISSENBORN, a Member of the Bar of the Supreme Court of the United States and counsel of record for Representatives of the Estate of Michael Gaydor, deceased, Michele R. Schram, or personal individually, Miller Adams and Mary Adams, his wife, and Nick Adams and Josie Adams, his wife, Petitioners herein, hereby certify that on June 20, 1984, I served 3 copies of the foregoing Petition for a Writ of Certiorari on each of the parties herein as follows:

On Stephen Keating, Assistant County Attorney, Dade County, Florida, by depositing such copies in the United States Post Office, Miami, Florida, with first-class postage prepaid, properly addressed to his Post Office address of Dade County Courthouse, 73 W. Flagler Street, Miami, Florida 33130.

On The Honorable Jim Smith, Attorney General of Florida, by depositing such copies in the United States Post Office, Miami, Florida, with first-class postage prepaid, properly addressed to his address at the Capitol, Tallahassee, Florida.

All parties required to be served have been served. DATED this 20 day of June, 1984.

SHERIDAN K. WEISSENBORN
PAPY, POOLE, WEISSENBORN
& PAPY
201 Alhambra Circle, Suite 502
Coral Gables, Florida 33134

By 

Attorneys for Petitioners

(2)

CASE NO. 83-2116

in the Supreme Court of the United States

October Term, 1984

MICHELE R. SCHRAM, as Personal Representative of the Estate of MICHAEL GAYDOS, deceased, and individually; MILLER ADAMS and MARY ADAMS, his wife; and NICK ADAMS and JOSIE ADAMS, his wife,

Petitioners,

vs.

DADE COUNTY, a political subdivision of the State of Florida,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

BRIEF OF RESPONDENT

ROBERT A. GINSBURG
Dade County Attorney
16th Floor
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130
(305) 375-5151
By
Stephen J. Keating
Assistant County Attorney

33 pp

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the Petition for a Writ of Certiorari should be denied because the Petitioners have failed to take the case first to the Florida Supreme Court, the highest state court to which the case could be taken.

(2) Whether the Petition for a Writ of Certiorari should be denied because, under the Fifth Amendment to the United States Constitution, it is well settled that "just compensation" means the fair market value of property taken, and the challenged Florida statute is not inconsistent with that principle.

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CASE NO. 83-2116

in the Supreme Court of the United States

October Term, 1984

MICHELE R. SCHRAM, as Personal Representative of the Estate of MICHAEL GAYDOS, deceased, and individually; MILLER ADAMS and MARY ADAMS, his wife; and NICK ADAMS and JOSIE ADAMS, his wife,

Petitioners,

vs.

DADE COUNTY, a political subdivision of the State of Florida,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

The Petitioners' Statement of the Case is adequate for the purpose of the Petition. Three points only need to be added:

1) The properties taken by the condemnor under the eminent domain power were both total, not partial takings.

2) The trial court allowed the jury to award to the owners the fair market value of their properties totally taken, and excluded the property owners' proffered testimony of what it would cost them to purchase other replacement properties.

3) As the case involved "total takings" no business damages were allowed to be awarded.

REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

I

The Petition, in its "Jurisdiction" statement, invokes Title 28 U.S.C.A, §1257(2) and (3). The Petition is for a Writ of Certiorari, however, and subsection (2) of that Title is therefore inapplicable.

Under Title 28, §1257, the Certiorari section,

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (3) by writ of certiorari, . . .

The decision of the Court of Appeals, Third District, of the State of Florida, which is the subject of this Petition for Certiorari, is not from the highest court of the State of Florida, nor is it from the "highest court of [the] state in which a decision could be had." For that reason, therefore, this Petition should be denied.

Under this Court's certiorari jurisdiction, Title 28 U.S.C.A., §1257(3), the judgment of an intermediate state appellate court is that of the highest court in which decision can be had if the state law makes its decision final and non-reviewable. *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446. If, however, there is discretionary review by a higher state court, the exercise of such discretion must be sought in the state courts. *Stratton v. Stratton*, 239 U.S. 55, 36 S.Ct.

26, 59 L.Ed. 55; *Banks v. California*, 395 U.S. 708, 89 S.Ct. 1901, 23 L.Ed.2d 653.

The Petitioners have made no application to the Florida Supreme Court for a Writ of Certiorari, as they could have done, pursuant to Florida Appellate Rule 9.030(a)(2)(A)(i)&(ii).

Proceedings in the appellate courts of Florida, including the Florida Supreme Court, are governed by the Constitution of the State of Florida, 1968 as amended, Art. V, §3(b)(3), and by the Florida Rules of Appellate Procedure. Copies of the pertinent Florida Rules and the Florida constitutional section cited are appended hereto as Exhibit A.

Rule 9.010 of the Florida Rules states that "these rules . . . shall govern all proceedings commenced on or after [March 1, 1978] in the Supreme Court. . ." Fla.R.App.P. 9.030(a)(2) states as follows:

> "(2) Discretionary Jurisdiction. The discretionary jurisdiction of the Supreme Court may be sought to review:
>
> (A) decisions of district courts of appeal that:
>
> (i) expressly declare valid a state statute;
>
> (ii) expressly construe a provision of the state or federal constitution; . . . ."

In the case *sub judice*, as the Petitioners admit, the trial court upheld the constitutionality of a state statute, §73.071(b), Fla.Stat., [sic] under the Fifth and Fourteenth Amendments to the United States Constitution and under §6 of Art. X of the Constitution of the State of Florida. (This appears in the stipulated statement of parties to appeal, in petitioners' brief Exhibit G, p. 25.) The District Court of Appeals, Third District, affirmed, *per curiam*, citing *State Road Department v. Bramlett*, 189 So.2d 481 (Fla. 1966), and §73.071(3)(b), Fla.Stat. (1981), (which is the correct citation). A copy of that statute is contained herein as Exhibit B.

With reference to Rule 9.030(a)(2)(A)(i)&(ii) cited, *supra*, it should be pointed out that the "stipulated statement of parties to appeal" referred to above is a permissible device under Florida Appellate Rules to assist the appellate Court in limiting the bulk of the record on appeal. Fla.R.App.P. 9.200(a)(3) states:

> "Stipulated Statement. The parties may prepare a stipulated statement showing how the issues to be presented arose and were decided in the lower tribunal, attaching a copy of the order to be reviewed and as much of the record in the lower tribunal as is necessary to a determination of the issues to be presented. . . ."

The *per curiam* opinion of the District Court of Appeals, Third District, which is the subject of this Petition for Writ of Certiorari, cited, *inter alia*, Section 73.071(3)(b), Fla.Stat. (1981). Exhibit F to Petitioner's Brief sets forth the evidence that the unconstitutionality of a cited statute under the Fifth and Fourteenth

Amendments to the United States Constitution was raised in the Third District Court of Appeals.

The Third District Court of Appeals, therefore, specifically upheld the constitutionality of a state statute. This was specifically raised by the Petitioner herein as is set forth in the Stipulated Statement. (Exhibit G to the Petition for Writ of Certiorari.) The opinion of the Third District Court of Appeals is reviewable by petition for writ of certiorari to the Florida Supreme Court under Fla.R.App.P. 9.030(a)(2)(A)(i) and (ii). For that reason, therefore, the case should properly have been brought, if at all, to the Florida Supreme Court, and not to the United States Supreme Court. Accordingly, it is respectfully suggested that the Petition for Writ of Certiorari should be denied for a lack of jurisdiction under Title 28, U.S.C.A. §1257.

II

The Petitioners' sole basis for their claim that this Court should allow certiorari jurisdiction is the pair of cases cited in the footnote to page 3 of Petitioners' Brief.

The *Dodi* case, *Dodi Publishing Co. v. Editorial America, S.A.*, 385 So.2d 1369 (Fla. 1980), deals with conflict certiorari. The Florida Supreme Court refused, in that case, to re-examine a case cited by a lower court in a *per curiam* affirmed opinion to see if it conflicted with other appellate decisions in the intermediate Florida Courts.

The case *sub judice* is not a "conflict" case, which would be covered by Fla.R.App.P. 9.030(a)(2)(A)(iv), but

one which may be taken to the Florida Supreme Court under Florida Constitution, Art. V, §3(b)(3) as amended 1980, and Fla.R.App.P. 9.030(a)(2)(A)(i) or (ii). (The rule, setting forth §§i, ii and iv is appended hereto as Exhibit C.)

The other case cited by Petitioners, *Robles Del Mar, Inc. v. Town of Indian River Shores*, 379 So.2d 967 (Fla.App. 4th 1979), but appearing later at 385 So.2d 1371, Supreme Court of Florida 1980, is also inapplicable. Petitioners contend that the *Robles* case supports their contention that the Third District Court of Appeals is the "highest court in which the decision could be had", but that case also apparently, but not clearly, deals with "conflict" certiorari, like the *Dodi* case on which they rely.

Neither *Dodi* nor *Robles* deal with Fla.R.App.P. 9.030(a)(2)(A)(i) and (ii), decisions of District Court of Appeals that "expressly declare valid a state statute," or "expressly construe a provision of the state or federal constitutions."

On the preliminary question of federal jurisdiction, therefore, the Petition should be denied, at least until such time as the Petitioners have attempted to have the case reviewed by the Florida Supreme Court.

III

In their Brief, Petitioners raise three "Questions Involved". As to the first, the "substantial federal question", the Petitioners devote only one one-sentence paragraph, at page 7 of the Brief. It is essential to the jurisdiction of the Supreme Court under §1257 of Title

28 U.S.C.A. that a substantial federal question has been properly raised in the state court proceedings. This federal question must be more than a formal one. It must not be so absolutely devoid of merit as to be frivolous. Nor can it be so explicitly foreclosed by prior decisions of the Supreme Court as to leave no room for real controversy. *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311, 47 L.Ed. 308, 311.

The just compensation clause of the Fifth Amendment to the United States Constitution has been dealt with very specifically by the federal courts in eminent domain cases. The so-called "federal issue" has been fully settled previously. *United States v. Miller*, 317 U.S. 369, 63 S.Ct. 276, 87 L.Ed. 336 (1943).

It is, therefore, urged that there is no substantial federal question.

Next, in their "Questions Involved", numbers 2 and 3, Petitioners invoke the Fifth and Fourteenth Amendments to the United States Constitution in a mixed fashion. The "just compensation" requirement of the Fifth Amendment is the basis for question 2. In question 3, Petitioners throw in a reference to the Equal Protection Clause of the Fourteenth Amendment, but nowhere in the text is equal protection of the laws discussed further.

As the "rulings in the District Court of Appeal of Florida, Third District, limiting petitioners' damages" were based expressly on the constitutionality of §73.071(b), Fla.Stat., (Stipulated Statement of Parties to Appeal, Exh. G to Petitioners' Brief), and correctly cited also in Exhibit A to Petitioner's Brief as §73.071(3)(b), Fla.Stat. (1981), the questions numbered 2 and 3 by the Petitioners

are really one and the same. Petitioners' question 2 amounts to a claim that "just compensation" includes in addition to the fair market value of the property an extra increment for the purchase of "replacement properties." The third argument seems to be that just compensation must also include business damages.

The question involves whether, where under state law in total takings neither the cost of purchasing other replacement properties nor business damages are compensable, the statute in question violates the Fifth and Fourteenth Amendments of the federal constitution.

As the Petitioners are measuring the Florida Statute against the Fifth Amendment to the United States Constitution, the federal decisions concerning the meaning of the "just compensation" clause of the Fifth Amendment are controlling.

"Just compensation" means the "market value of the property". *United States v. Miller, supra.*

The prevailing rule in the United States is the payment of compensation for damage to or destruction of a business, attributable to the taking of property in a condemnation proceeding, is payable only when authorized by statute. 4 *Nichols on Eminent Domain*, §13.3 (rev.3rd ed., 1976). Indeed, the Florida courts have followed this rule, that is that business damage does not constitute a part of the constitutionally protected concept of "just" or "full" compensation and is compensable only if allowed by statute. *State Road Department v. Bramlett*, 189 So.2d 481 (Fla. 1966); *State Road Department v. Abel Investment Co.*, 165 So.2d 832 (Fla. 2d DCA 1964), *cert. den.*, 169 So.2d 485.

There is no authority in Florida for the proposition that a property owner is entitled, in addition to the fair market value of his property totally taken, also to an increment calculated on a basis of costs of purchasing replacement properties.

The sole discernible reason for Petitioners' claim that §73.071(3)(b), Fla.Stat., as applied, deprived an owner of real property of equal protection or due process of law is that the statute lacks a rational relationship to constitutionally permitted goals.

The Petitioners' claim that on its face (or for that matter otherwise) §73.071, Fla.Stat. is illogical or lacking in a rational relationship to the goal of achieving "just compensation" is erroneous.

The most obvious rational basis for the statute as it relates to business damages can be seen by reference to the statute's treatment of severance damages.

Under §73.071(3)(b), Fla.Stat., if, in an eminent domain case an entire parcel of real property is taken by a government agency, the condemning authority must pay the owner the value of the real property—land plus improvements—taken. If only a part of the real property is taken, in addition to the value of the property taken another amount may be awarded, called "severance damages". This is an estimate of the damage caused by the partial taking to the remaining portion of the property still owned by the condemnee.

The prime reason for granting severance damages in partial taking cases is that the owner has been left

"stuck with" his damaged remaining property. In total takings he has no such problem.

The same distinction exists with regard to business damages, which are in any event not an element of constitutionally protected damages but are in Florida awarded as a matter of legislative grace in certain circumstances. *State Road Department v. Bramlett, supra; State Road Department v. Abel Investment Co, supra.*

In total takings, under Florida law, as under federal law, *United States vs. Miller, supra,* no business damages are allowed. Under §73.071(3)(b), Fla.Stat., in partial takings (for established businesses of more than five years' duration) business damages may be assessed because the business owner is still possessed of a business which must be run on the piece of real estate which has been diminished in size because of the taking.

Where a total taking takes place the owner is paid fully for the real property and is enabled, if he desires to do so, to do business elsewhere, untrammelled by ownership of a business on property which has been reduced in size because of the taking.

The basis for the distinction between partial and total takings is, therefore, entirely rational.

In the Petition for Writ of Certiorari, the Petitioners claim that they should have received an award based not upon severance damages but for business damages. Both are excluded by the statute §73.071(3)(b), Fla.Stat., in "total" taking cases.

The claim is that "business damages" are part of "just compensation" for property taken for the purposes of the Fifth Amendment of the United States Constitution, and that the statute is therefore unconstitutional. In support of that proposition, the Petitioners cite several cases which are inapplicable and one of which strongly supports the decision of the trial court, affirmed below by the Florida Court of Appeals, Third District.

Petitioners cite the case of *Georgia-Pacific v. United States*, 640 F.2d 328 (1980), in support of the "rule" of *Ogden v. Saunders*, 25 U.S. 213, 12 Wheat. 213, 6 L.Ed. 606 (1827). The respondent has no objection to the general "rule" set forth in *Ogden*, but fails to see the significance of *Georgia-Pacific*.

Georgia-Pacific was a federal case involving a partial, not a total taking, of forested lands for a national park. The discussion in *Georgia-Pacific* involved a complicated factual dispute concerning severance, not business damages. Although much evidence was offered concerning the extra expense which the condemnees claimed they would have to incur to harvest the redwood timber on their remaining land, these expenses were an index of severance damage—damage to the property—and were not claimed as business damages, which are in any event not obtainable under federal law. *United States v. Miller, supra.*

To the contrary, however, two passages from the *Georgia-Pacific* opinion quoted by the Petitioners set forth the correct rule under federal eminent domain law:

" 'The owner must be compensated for what is taken from him, but that is done when he has paid its fair market value for all available uses and purposes.' *United State v. Chandler-Dunbar Water Power Company*, 229 U.S. 53, 81, 33 S.Ct. 667, 679, 57 L.Ed. 1063 (1913). It has been said that a condemnee 'is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; to award him more would be unjust to the public.' *Bauman v. Ross*, 167 U.S. 548, 574, 17 S.Ct. 966, 976, 42 L.Ed. 270 (1897). Plaintiff has been paid the fair market value of the gravel deposit site and the gravel located thereon taken from it. It is not entitled to more.

"It is settled that not all losses suffered by the owner are compensable under the Fifth Amendment. The government must pay only for what it takes, not for opportunities which the owner may have lost. *United States ex rel. TVA v. Powelson*, *supra*, 319 U.S. at 281, 283-84, 63 S.Ct. at 1056-57. Since alternative gravel was available to plaintiff, the fact that plaintiff may have had to pay more for said gravel after the taking would suggest a business loss or the loss of future profits on its timber operations. Such losses are not compensable. (Citations omitted). Finally, it would not be unreasonable, in my opinion, to view this claim essentially as one for the recovery of

consequential damages. Under federal law,[43] there can be no recovery for consequential damages as a result of a taking. *Mitchell v. United States*, 267 U.S. 341, 345-46, 45 S.Ct. 293, 294, 69 L.Ed. 644 (1925); *United States v. 91.90 Acres of Land*, (69 F.Supp. 328, 332 (D.P.R. 1947))."

The Court in *Georgia-Pacific, supra*, went on to add at pages 364-65:

> "In any event, it seems to me that this severance damages claim is, in essence, one for consequential damages and thus not compensable. . . . The claim as advanced by plaintiff seems to rest more on anticipated business operation frustrations or anticipated readjustment of business operations on the remainder lands because of the partial taking. Such business frustrations and readjustments have been held non-compensable." (Citations omitted).

Petitioners' citation to the case of *United States v. 499.472 Acres of Land More or Less in Brazoria*, 701 F.2d 545 (5th CCA 1983) is to a dictum which has no relationship to the *Ogden* case cited by the Petitioners, or to any other relevant point.

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footnote[43] The measure of just compensation is governed by the United States Constitution. The Constitution has never been construed as requiring the payment of consequential damages. *See United States v. Miller*, 317 U.S. 369, 376, 379-80, 63 S.Ct. 276, 282-83, 87 L.Ed. 336 (1943). . . ."

Finally, in support of their claim under the Fifth Amendment, the Petitioners cite the case of *United States v. 564.54 Acres of Land*, 441 U.S. 506, 99 S.Ct. 1854, 60 L.Ed.2d 435 (1979). That case is fully supportive of the decision of the trial court and the court of appeals, State of Florida, Third District, in the case *sub judice*.

That case fully supports the well established rule of law set forth in the *Miller* case, *supra*, which they also cite. At page 1857 this Court said:

> "The court therefore has employed the concept of fair market value to determine the condemnee's loss. Under this standard the owner is entitled to receive 'what a willing buyer will pay in cash to a willing seller' at the time of the taking." (citations omitted).

Nothing in *564.54 Acres* suggests any law to the contrary, and the case is totally consistent with the Respondents' position herein.

CONCLUSION

For the reasons set forth in the above arguments, the Petition for a Writ of Certiorari should, it is respectfully requested, be denied.

Respectfully submitted,

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Appendix

INDEX TO APPENDIX

EXHIBIT A(1)

Article V, §3(b)(3), Florida Constitution

ARTICLE V

JUDICIARY

* * *

SECTION 3. **Supreme court.**—

* * *

(b) JURISDICTION.—The supreme court:

* * *

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

* * *

EXHIBIT A(2)

Article X, §6, Florida Constitution

ARTICLE X

MISCELLANEOUS

* * *

SECTION 6. **Eminent domain.**–

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

EXHIBIT A(3)

Rule 9.010, Florida Rules of Appellate Procedure

Rule 9.010. Effective Date and Scope

These rules, cited as "Florida Rules of Appellate Procedure", and abbreviated "Fla.R.App.P.", shall take effect at 12:01 a.m. on March 1, 1978. They shall govern all proceedings commenced on or after that date in the Supreme Court, the district courts of appeal, and the circuit courts in the exercise of the jurisdiction described by Rule 9.030(c); provided that any appellate proceeding commenced before March 1, 1978, shall continue to its conclusion in the court in which it is then pending in accordance with the Florida Appellate Rules, 1962 Revision. These rules shall supersede all conflicting rules and statutes.

EXHIBIT A(4)

Rule 9.200(a)(3), Florida Rules of Appellate Procedure

Rule 9.200. The Record

(a) Contents.

* * *

(3) *Stipulated Statement.* The parties may prepare a stipulated statement showing how the issues to be presented arose and were decided in the lower tribunal, attaching a copy of the order to be reviewed and as much of the record in the lower tribunal as is necessary to a determination of the issues to be presented. The parties shall advise the clerk of their intention to rely upon a stipulated statement in lieu of the record as early in advance of filing as possible. The stipulated statement shall be filed by the parties and transmitted to the court by the clerk of the lower tribunal within the time prescribed for transmittal of the record.

* * *

EXHIBIT A(5)

Rule 9.030(a)(2), Florida Rules of Appellate Procedure

Rule 9.030. Jurisdiction of Courts.

(a) Jurisdiction of Supreme Court.

* * *

(2) *Discretionary Jurisdiction.* The discretionary jurisdiction of the Supreme Court may be sought to review:

(A) decisions of district courts of appeal that;[5]

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

(v) pass upon a question certified to be of great public importance.

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the Supreme Court, and;[6]

(i) to be of great public importance, or

(ii) to have a great effect on the proper administration of justice;

(C) questions of law certified by the Supreme Court of the United States or a United States Court of Appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.[7]

EXHIBIT B

Section 73.071(3)(b), Florida Statutes (1981)

73.071 Jury trial; compensation, severance damages.—

* * *

(3) The jury shall determine solely the amount of compensation to be paid, which compensation shall include:

* * *

(b) Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking, including, when the action is by the Division of Road Operations of the Department of Transportation, county, municipality, board, district or other public body for the condemnation of a right-of-way, and the effect of the taking of the property involved may damage or destroy an established business of more than 5 years' standing, owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party, the probable damages to such business which the denial of the use of the property so taken may reasonably cause; any person claiming the right to recover such special damages shall set forth in his written defenses the nature and extent of such damages; and

* * *

EXHIBIT C

Rule 9.030(a)(2)(A)(i)(ii)(iv)
Florida Rules of Appellate Procedure

Rule 9.030. Jurisdiction of Courts

(a) Jurisdiction of Supreme Court.

* * *

(2) *Discretionary Jurisdiction.* The discretionary jurisdiction of the Supreme Court may be sought to review:

(A) decisions of district courts of appeal that;[5]

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

* * *

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

* * *